

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

MGM GRAND HOTEL, LLC,

Employer

Case No. 28-RC-225344

and

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW,**

Petitioner.

**INTERNATIONAL UNION, UAW’S OPPOSITION TO MGM GRAND HOTEL, LLC’S
EMERGENCY MOTION TO RESCHEDULE OBJECTIONS HEARING**

On September 17, 2018, Employer MGM Grand Hotel, LLC filed an “emergency” motion to reschedule the hearing on its objections to the election, which is currently scheduled to begin on September 20, 2018. MGM raises two bases for its motion: the alleged destruction of evidence, specifically text messages, by two individual employees whom it served with subpoenas *duces tecum*, and the absence from the country of another employee subpoenaed to testify by MGM. Neither of these reasons support postponing the hearing, and Petitioner International Union, UAW therefore opposes MGM’s motion.

First, with respect to the alleged destruction of evidence by individual employees Ernie Mutter and/or Rovaric Fajardo, although compliance with a subpoena is not optional, MGM has not explained how the allegedly destroyed text messages are relevant, let alone integral to its case such that it cannot move forward on the scheduled hearing date. MGM initially made the same allegations contained in its objections in an unfair labor practice charge filed prior to the election,

in a failed attempt to block the election. It then converted those allegations to the instant objections, which it filed on August 31, 2018, less than twenty-four hours after the election. This timing demonstrates that MGM has known, for some time, of the conduct that it alleges tainted the showing of interest and election, and its last minute “emergency” request for a postponement is unnecessary.

In addition, nowhere in MGM’s motion does it explain what the allegedly destroyed text messages may or may not contain or even who they were exchanged between. MGM makes the conclusory statement that the allegedly destroyed documents would be responsive to its subpoenas, but it does not say how or why. Moreover, MGM has also subpoenaed any text message or other communications between the UAW (or UAW organizer Helen Walker) and any employee with the title Slot Supervisor, including Mr. Mutter and Mr. Fajardo, and the UAW intends to comply with those subpoenas. And, MGM has not alleged that it is unable to call Mr. Mutter or Mr. Fajardo as witnesses, or that it cannot question them about conduct that MGM alleges tainted the election, including any text communications that they sent or received. Accordingly, MGM is not unduly hampered from moving forward on the scheduled hearing date.

Furthermore, the Board’s cases dealing with instances of non-compliance with a subpoena *duces tecum*, including destruction of evidence, hold that if there is a remedy or response to that action, it is drawing an adverse inference or issuing evidentiary sanctions. *See, e.g., Copper River of Boiling Springs, LLC*, 360 NLRB 459, 475 (2014). It is not delaying the hearing so that a party can go on a fishing expedition to attempt to recreate possibly irrelevant, possibly nonexistent, allegedly destroyed evidence.

Second, with respect to the alleged out-of-country absence of subpoenaed witness Teresa Ramirez, the Board has held it appropriate to deny a request to postpone a hearing because a

witness chose to leave the country on vacation despite knowledge of the hearing. *See, e.g., Greenpark Care Ctr.*, 236 NLRB 683, 683 n.3 (1978).

Lastly, counsel for the UAW has already traveled to Las Vegas in preparation for the hearing, and rescheduling at this very late date would cause substantial additional time, expense, and disruption to the UAW.

For all of the above reasons, MGM has not shown that good cause exists to postpone and reschedule the hearing in this case. The UAW therefore opposes MGM's motion to reschedule the hearing.

Respectfully submitted,

s/Ava Barbour
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Dated: September 17, 2018.